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9
10 **BEFORE THE**
BOARD OF REGISTERED NURSING
DEPARTMENT OF CONSUMER AFFAIRS
11 **STATE OF CALIFORNIA**

12 In the Matter of the Accusation Against:

Case No. 2010-29

13 **MARCUS KENT BROCK**
2825 East 7th Street, Apt. 9
14 Long Beach, CA 90804

A C C U S A T I O N

15 Registered Nurse License Number 486660

16
Respondent.

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18 Complainant alleges:

19 **PARTIES**

20 1. Heidi J. Goodman (Complainant) brings this Accusation solely in her
21 official capacity as the Assistant Executive Officer of the Board of Registered Nursing,
22 Department of Consumer Affairs.

23 2. On or about March 31, 1993, the Board of Registered Nursing issued
24 Registered Nurse License Number 486660 to Marcus Kent Brock (Respondent). The Registered
25 Nursing license was in full force and effect at all times relevant to the charges brought herein, and
26 will expire on February 28, 2011, unless renewed.

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1 8. Section 490 of the Code states:

2 "(a) In addition to any other action that a board is permitted to take against a
3 licensee, a board may suspend or revoke a license on the ground that the licensee has been
4 convicted of a crime, if the crime is substantially related to the qualifications, functions, or duties
5 of the business or profession for which the license was issued.

6 "(b) Notwithstanding any other provision of law, a board may exercise any
7 authority to discipline a licensee for conviction of a crime that is independent of the authority
8 granted under subdivision (a) only if the crime is substantially related to the qualifications,
9 functions, or duties of the business or profession for which the licensee's license was issued.

10 "(c) A conviction within the meaning of this section means a plea or verdict of
11 guilty or a conviction following a plea of nolo contendere. Any action that a board is permitted to
12 take following the establishment of a conviction may be taken when the time for appeal has
13 elapsed, or the judgment of conviction has been affirmed on appeal, or when an order granting
14 probation is made suspending the imposition of sentence, irrespective of a subsequent order under
15 the provisions of Section 1203.4 of the Penal Code.

16 "(d) The Legislature hereby finds and declares that the application of this section
17 has been made unclear by the holding in *Petropoulos v. Department of Real Estate* (2006) 142
18 Cal.App.4th 554, and that the holding in that case has placed a significant number of statutes and
19 regulations in question, resulting in potential harm to the consumers of California from licensees
20 who have been convicted of crimes. Therefore, the Legislature finds and declares that this section
21 establishes an independent basis for a board to impose discipline upon a licensee, and that the
22 amendments to this section made by Senate Bill 797 of the 2007 -08 Regular Session do not
23 constitute a change to, but rather are declaratory of, existing law."

24 9. Section 493 of the Code states:

25 "Notwithstanding any other provision of law, in a proceeding conducted by a
26 board within the department pursuant to law to deny an application for a license or to suspend or
27 revoke a license or otherwise take disciplinary action against a person who holds a license, upon
28 the ground that the applicant or the licensee has been convicted of a crime substantially related to

1 the qualifications, functions, and duties of the licensee in question, the record of conviction of the
2 crime shall be conclusive evidence of the fact that the conviction occurred, but only of that fact,
3 and the board may inquire into the circumstances surrounding the commission of the crime in
4 order to fix the degree of discipline or to determine if the conviction is substantially related to the
5 qualifications, functions, and duties of the licensee in question.

6 "As used in this section, 'license' includes 'certificate,' 'permit,' 'authority,' and
7 'registration.'"

8 10. California Code of Regulations, title 16, section 1445, states:

9 "

10 "(b) When considering the suspension or revocation of a license on the grounds
11 that a registered nurse has been convicted of a crime, the board, in evaluating the rehabilitation of
12 such person and his/her eligibility for a license will consider the following criteria:

13 "(1) Nature and severity of the act(s) or offense(s).

14 "(2) Total criminal record.

15 "(3) The time that has elapsed since commission of the act(s) or offense(s).

16 "(4) Whether the licensee has complied with any terms of parole, probation,
17 restitution or any other sanctions lawfully imposed against the licensee.

18 "(5) If applicable, evidence of expungement proceedings pursuant to
19 Section 1203.4 of the Penal Code.

20 "(6) Evidence, if any, of rehabilitation submitted by the licensee."

21 11. California Code of Regulations, title 16, section 1444, states:

22 "A conviction or act shall be considered to be substantially related to the
23 qualifications, functions or duties of a registered nurse if to a substantial degree it evidences the
24 present or potential unfitness of a registered nurse to practice in a manner consistent with the
25 public health, safety, or welfare. Such convictions or acts shall include but not be limited to the
26 following:


27 "(a) Assaultive or abusive conduct including, but not limited to, those violations
28 listed in subdivision (d) of Penal Code Section 11160.

1 “(b) Failure to comply with any mandatory reporting requirements.
2 “(c) Theft, dishonesty, fraud, or deceit.
3 “(d) Any conviction or act subject to an order of registration pursuant to Section
4 290 of the Penal Code.”
5 12. Section 11160, subdivision (d) of the Penal Code, states:
6 “For the purposes of this section, ‘assaultive or abusive conduct’ shall
7 include any of the following offenses:
8 “(1) Murder, in violation of Section 187.
9 “(2) Manslaughter, in violation of Section 192 or 192.5.
10 “(3) Mayhem, in violation of Section 203.
11 “(4) Aggravated mayhem, in violation of Section 205.
12 “(5) Torture, in violation of Section 206.
13 “(6) Assault with intent to commit mayhem, rape, sodomy, or oral copulation,
14 in violation of Section 220.
15 “(7) Administering controlled substances or anesthetic to aid in commission of
16 a felony, in violation of Section 222.
17 “(8) Battery, in violation of Section 242.
18 “(9) Sexual battery, in violation of Section 243.4.
19 “(10) Incest, in violation of Section 285.
20 “(11) Throwing any vitriol, corrosive acid, or caustic chemical with intent to
21 injure or disfigure, in violation of Section 244.
22 “(12) Assault with a stun gun or taser, in violation of Section 244.5.
23 “(13) Assault with a deadly weapon, firearm, assault weapon, or machinegun, or
24 by means likely to produce great bodily injury, in violation of Section 245.
25 “(14) Rape, in violation of Section 261.
26 “(15) Spousal rape, in violation of Section 262.
27 “(16) Procuring any female to have sex with another man, in violation of
28 Section 266, 266a, 266b, or 266c.

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1. Revoking or suspending Registered Nurse License Number 486660 issued to Marcus Kent Brock;

3. Taking such other and further action as deemed necessary and proper.


Heidi J. Goodman
Assistant Executive Officer
Board of Registered Nursing
Department of Consumer Affairs
State of California
Complainant